

REMARKS

Claims

The final Office Action dated September 7, 2005 rejected claims 1-26 based on U.S. Publication No. 2003/0172116 A1 to Curry et al. in view of U.S. Publication 2004/0172451 A1 to Biggs et al. In view of the amendment filed on November 7, 2005 and the following remarks, reconsideration and prompt early allowance are respectfully requested.

Rejections under 35 U.S.C. § 103(a)

Claims 1-26 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Curry et al. in view of Biggs et al. This rejection is respectfully traversed.

The Advisory Action issued on November 28, 2005 alleged that the declarations filed on November 7, 2005 contained no new material from the declarations filed on July 7, 2005. The applicant respectfully disagrees. Applicant submitted Exhibits A-D along with a Declaration under 37 C.F.R. § 1.131 with the amendment filed on November 7, 2005 to overcome the Office Action's rejection under 35 U.S.C. § 103(a). Exhibits B-D are new material that were included to show that the applicant was diligent in reducing their invention to practice. Exhibits B-D were not included with the original declarations filed on July 7, 2005, therefore, Exhibits B-D are new material that should be considered.

The Advisory Action further alleges that the applicant has not proven diligence, however, the applicant respectfully disagrees. To overcome a reference, an applicant must first "state facts and produce such documentary evidence and exhibits in support thereof as are available to show conception . . . , at least the conception being at a date prior to the effective date of the reference." MPEP 715.07. The applicant has

demonstrated a date of conception prior to the effective filing date of the Biggs reference by submitting Exhibit A.

After establishing a date of conception prior to the effective filing date of a reference, the applicant must then establish diligence in reducing his invention to practice: “[w]here there has not been reduction to practice prior to the date of the reference, the applicant or patent owner must also show diligence in the completion of his or her invention from a time just prior to the date of the reference continuously up to the date of an actual reduction to practice or up to the date of filing his or her application.” MPEP 715.07. Exhibits B-D were submitted to show diligence in the completion of the invention from a time prior to the filing date of the Biggs reference continuously up to a date of an actual reduction to practice.

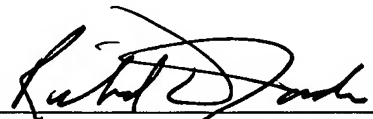
The applicant has thus demonstrated a date of conception prior to the effective filing date of the Biggs reference as well as diligence in reducing the invention to practice, therefore, a valid rejection under 35 U.S.C. § 103(a) can no longer be maintained as the Biggs reference does not qualify as prior art. Accordingly, withdrawal of the rejection of these claims under 35 U.S.C. §103 is respectfully requested.

CONCLUSION

Applicant has duly considered the rejections of claims 1-26 in the Office Action, and responded by the foregoing amendments and remarks. Applicant has thereby even further distinguished the pending claims from the art of record. Applicant therefore respectfully requests timely entry of this Amendment and passing of this application to issue. Should however any issues remain before issuing this application, the Examiner is urged to contact the undersigned to resolve the same. The Commissioner is hereby authorized to charge any additional amount required, or credit any overpayment, to Deposit Account No. 19-2112 referencing Attorney Docket No. MFCP.108796.

Respectfully submitted,

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